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ZEE- INVESCO TUSSLE: GROWING SHAREHOLDER ACTIVISM IN INDIA[1]

ABSTRACT

The quintessence of this research paper is founded on shareholder activism and its impacts and influence on the companies listed in Indian stock exchanges and their top-level management. Shareholder activism primarily emanates from deficient corporate practices. Further, Indian laws and regulations safeguarding the rights and interests of both majority and minority shareholders and regulating functioning of proxy firms, have been enumerated. The outcomes of Kotak Committee formed by SEBI for healthier corporate practices are touched upon. Subsequently, the paper emphasizes on the landmark corporate battle of 2021 between Zee and Invesco- the EGM requisition, removal of the current CEO, and the timeline along with other intricacies involved thereof. Amidst the brawl, Zee signed a non-binding term sheet for amalgamating with Sony Entertainment. The peculiarities of and the hurdles caused to the deal by Invesco's activism have also been discussed in detail. Towards the end, the paper throws light on the past trends and causes of shareholder activism witnessed in the country. The role of proxy firms in swaying shareholders has been significant. The reports and recommendations for vote issued by the former assists the latter in opting for more feasible options for the company. Various instances of activism undertaken by shareholders of various companies viz. Maruti Suzuki, Eicher Motors, Balaji Telefilms, Lupin, Wipro, and the infamous Tata-Mistry dispute has been mooted. The paper concludes by discussing the ways for companies to deal better with shareholder activism. Board portal and cloud governance are a couple of technological tools that a company may put into use for effective governance practices in the corporation.

Keywords: shareholders, ZEE, activism, Invesco, proxy firms, EGM, corporate governance, rights and obligations

[1]Shashwat Jain,Vivekananda Institute of Professional Studies, GGSIP University, Delhi

INTRODUCTION

Corporate governance is a set of methods and principles for a corporation, regulating its ethics and morality. Best practices for corporate governance can be highlighted by the respective obligations and responsibilities of board of directors and shareholders, towards each other and the company. Besides conforming with the code of conduct set out by the laws and regulations of the country, the practices of corporate governance are mostly self-regulatory. Such practices guide the corporation to be practical and pensive in the decision-making process. Shareholders' interests in the operations of the company are cardinal. Accountability, transparency, and open disclosure with shareholders are essential for healthy relations and eventually, determine a company's long-term success and viability. Activism is about making a difference and bringing in a change. A shareholder activist is someone who strives to utilize their rights as a shareholder of a publicly listed company, to also effect change within, or for the company. Shareholder activism is less likely to affect corporations that follow optimal practices for efficacious corporate governance.

Talking about shareholder activism, Mark Mobius alias 'Indiana Jones of Emerging Market Investing' has articulated that, "Shareholder activism is not a privilege- it is a right and a responsibility. When we invest in a company, we own a part of that company and we are partly responsible for how that company progresses. If we believe there is something going wrong with the company, then we, as shareholders, must become active and vocal." Questions about a company's ethical culture, how it handles the issues pertaining to climate change, and governance issues such as Chief Executive Director ("CEO") compensations to Key Managerial Personnel are crucial and play a big role in shareholder activism. Additionally, shareholder activism in the past has also been witnessed for the purpose of replacing the entire board, or for change in company policies, or disclosure on some issue, etc. The shape that activism takes is frequently determined by the sort of investor and what they desire. Ordinarily, it is the institutional investors[2] or hedge funds who has the muscle to make an impact, since they have a conspicuous stake in the company. On the contrary, individual or retail investors despite having the will to make a change and having submitted lots of shareholder proposals, remain deficient of the support to drive a real change. Shareholder activism promotes stronger company governance by ensuring strong governance and investment practices that provide value for shareholders. Good corporate governance assumes that boards will continue to work toward

2. Institutional investors comprise of pension funds, asset managers, mutual funds and insurance companies.

board compositions that support the required skills and expertise for the company's long-term success. To demonstrate such corporate practice, the senior management at Apollo Tyres adopted an excellent shareholder approach and accepted a pay cut in 2020 in order to reduce the financial liability on the company. The said remuneration reduction by the top management does not only display efficient corporate governance, but also espirit de corps during the time when the affairs of the company were disrupted by the Covid-19 pandemic. The principles of sound corporate governance also lay a strong emphasis on board directors' fiduciary obligation in handling the assets of the company. In absence of good corporate practices, shareholders' emphasis on duty of care fosters an atmosphere in which they are inclined to inquire about the board's approaches to strategic planning, risk management, and operations.

PROVISIONS FOR SHAREHOLDER ACTIVISM UNDER INDIAN LAW

The Companies Act, 2013 ("CA 2013") along with various Regulations enacted by Securities and Exchange Board of India ("SEBI") have duly ensured protection of rights and concerns of shareholders of a company. The Companies Act provides the shareholders of a company with the power to appoint and remove the directors of the company, provided the befitting procedure as provided by the Act is adhered to[3]. In case of any dispute, the shareholders have the capacity to remove a director by a mere majority vote, after providing the concerned director an opportunity to be heard. Nevertheless, those directors nominated by the National Company Law Tribunal ("NCLT") or by the minority shareholders under the proportional representation method, cannot be removed by the shareholders. In certain instances, the board is obligated by the Companies Act to refer significant matters to the shareholders for their vote of approval. Such matters include, appointment and removal of directors and auditors, mergers and acquisitions, sales of undertakings, variation of shareholder rights, alteration in memorandum of association or articles of association, declaration of dividends, reduction in capital, liquidation of the company, etc. The conundrums shareholders had to face with postal ballot were done away with the introduction of e-voting. By the virtue of e-voting, a shareholder can attend and participate in the general meeting [4]. The Central Government has the power to prescribe the class(s) of companies and manner in which a member exercises the right to vote by the electronic means[5]. One of the remedies for a shareholder under the Companies Act has been provided against the oppression and/ or mismanagement. Such proceedings can be initiated against the controlling majority, by not less

3. Chapter XI of the CA 2013 deals with appointment and qualification of directors.
4. Companies (Management and Administration) Rules, 2014, Rule 20(1) (Apr. 1, 2014)
5. Companies Act, 2013, No. 18 of 2013, § 108 (Ind.)

than 100 or 10 per cent of the total number of shareholders of the company, whichever is less, or by a shareholder holding at least 10 per cent of the issued share capital. Where any member of a company objects that the company's deeds are prejudicial to public interest or oppressive to him, or any other member, or to the company as a whole, may approach NCLT for relief [6]. With regards to looking out for the interests of minority shareholders of a company, CA 2013 provides for class action suits[7] for seeking restraining orders against the company, or its directors, auditors, or any expert or consultant for any action ultra vires to the memorandum or articles of association of the companyor other actions that are detrimental to the interests of the company and its stakeholders, and to seek damages or compensation from them.

Complementing the Companies Act, 2013, SEBI also provides for regulations to protect the rights of the shareholders of listed companies. The shareholders of a listed company, by the virtue of SEBI regulations have certain supplementary rights and remedies to express their opinions and actively safeguard their interests. As mandated by SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 listed companies are thus required to institute a stakeholders relationship committee[8]. The intent behind establishing such a committee is to resolve shareholders complaints and grievances of the stakeholders along with providing electronic voting facilities. The SEBI (Research Analyst) Regulations, 2014 regulate Proxy Advisory Firms ("PAFs"), which have an eminent contribution to shareholder activism. The Regulations define proxy advisors as "any person who provide advice, through any means, to institutional investor or shareholder of a company, in relation to exercise of their rights in the company including recommendations on public offer or voting recommendation on agenda items" [9]. The function of a PAF is to advise an institutional investor or other shareholders of a company on ways to exercise their rights in the company. The subject of recommendations may range from public offer to voting on agenda items, thereby also proving to be influential in determining voter pattern of shareholders.

In June 2017, SEBI formed the Kotak Committee with the banking pioneer, Mr. Uday Kotak at the helm, along with twenty-four other various experts from the government, industry, stock exchanges, PAFs, lawyers, etc. for the sole objective of improving touchstone of

6. Companies Act, 2013, No. 18 of 2013, § 241 (Ind.)
7. Companies Act, 2013, No. 18 of 2013, § 245 (Ind.)
8. SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015, Gazette of India, pt. III sec. 4, Reg. 20 (Sept. 2, 2015)
9. SEBI (Research Analyst) Regulations, 2014, Gazette of India, pt. III sec. 4, Reg. 2(1)(p) (Sept. 2, 2014)

corporate governance in the listed companies[10]. The recommendations of the Committee in accordance with the approval of SEBI are hereunder. First and foremost, the Committee suggested for a threshold of six directors with diverse background and proficiencies on the boards of listed companies to meet the functions and responsibilities effectively. SEBI implemented the recommendation with certain modification mandating the top 2000 listed corporations (by market capitalization) to have a minimum of six directors. Additionally, the Committee advocated for at least one independent women director on the board of every listed company. The same was accepted and implemented by SEBI for the top 1000 listed companies (by market capitalization). Such an obligation intended to bring gender diversity on the board. Another alteration made in the prevailing norms was increasing the quorum for every meeting of the board for the top 2000 listed companies (by market capitalization) to one-third of the size of the board or three members, whichever is higher, which shall contain at least one independent director. The Committee also had a say on separation of key positions. Now, the top 500 listed companies (by market capitalization) shall conform with the requirement of the chairperson of their boards neither being an executive director nor be related to the MD/ CEO of the company. However, the said norm was protested by industry and is yet to be put into effect. Shareholders' approval has been made mandatory for related parties transactions exceeding 2 per cent of consolidated revenue by the listed entities. The role of Nomination and Remuneration Committee, Stakeholders Relationship Committee, and Risk Management Committee have been brought into light by introduction of various obligations. The abovementioned modifications and outline of the new mandates were made to bring the Indian corporate governance standards in line with the global practices, and thus can be seen as a definite step ahead.

LEAPING INTO THE ZEE- INVESCO COURT CLASH

On September 29, 2021, Invesco Developing Market Funds ("Invesco"), which owns a 17.88 per cent[11] stake in Zee Entertainment Enterprises Ltd. ("Zee") along with its subsidiary OFI Global China Fund LLC ("OFI"), approached the NCLT Mumbai bench with a petition under sections 98(1)[12] and 100 of CA 2013. The promoter and promoter group of Zee hold and control

10. Securities and Exchange Board of India, Report of the committee on corporate governance (2017), https://www.sebi.gov.in/reports/reports/oct-2017/report-of-the-committee-on-corporate-governance_36177.html
11. Zee Entertainment, Shareholding Pattern, (2020-21), https://assets.zee.com/wp-content/uploads/2020/10/ZEEL_eq.Website-Share_Pattern_30092020.pdf
12. Power of Tribunal to call meeting of members.

about 3.99 per cent[13] of equity in the company. The petitioner, i.e., Invesco asserted that it had submitted a requisition to the board of Zee for calling an extraordinary general meeting ("EGM") under the authority vested in it[14]. The objective of the EGM was the removal of Zee's chief executive and managing director Punit Goenka (son of Zee's founder Subhash Chandra) from company's board along with two independent directors, Ashok Kurien and Manish Chokhani, whereafter the two independent directors had resigned citing personal reasons. Invesco also sought appointment of six new independent directors. The activism on the part of Invesco came after Institutional Investors Advisory Services ("IIAS"), a PAF highlighted corporate governance concerns in the company with the current CEO & managing director ("MD'') at the helm. A IIAS report held the two independent directors, who were members of audit committee in FY20, responsible for losses on account of a related party transaction, thus resulting in significant erosion of shareholder wealth. Thus, in an upcoming annual meet-oriented voting recommendation report, the PAF suggested the shareholders to vote against reappointment of the abovementioned three directors[15]. Another PAF, InGovern had also raised concerns over appointment of Punit Goenka as a member of the audit committee, which took place in March, 2021, him also being the promoter executive director[16]. However, amidst the boardroom tussle between the current management and the largest shareholders, some old time and minority shareholders of Zee conveyed their conviction for the current board including the CEO Punit Goenka. Furthermore, all the resolutions in the list of business for the impending annual meet were approved by the shareholders, thereby keeping the prevailing CEO & MD still honcho.

The Mumbai bench of NCLT ordered Zee to file a reply to the requisition notice by Invesco complying with the timeframe of 21 days as prescribed by section 100 of CA 2013. The Mumbai bench further instructed Zee to hold a board meeting adjudicate upon the issue. What followed was an appeal filed by Zee before National Companies Law Appellate Tribunal ("NCLAT") against NCLT's order, seeking a further two-week time period to file the reply to the requisition notice. While observing that the provision of the Companies Act [17], under which Invesco specifically sought reliefs, does not prescribe any time limit, NCLAT held that the

13. supra note 10
14. Companies Act, 2013, No. 18 of 2013, § 100 (Ind.)
15. Institutional Investor Advisory Services, Voting Recommendations (2021), https://www.IIASadrian.com/mr/7552
16. Ayushi Kar, InGovern raises concerns over Punit Goenka's appointment, B. Line, (Sept. 14. 2021) https://www.thehindubusinessline.com/companies/ingovern-raises-concerns-over-punit-goenkas-appointment-as-member-of-audit-committee/article36448166.ece
17. Companies Act, 2013, No. 18 of 2013, § 98 (Ind.)

NCLT bench has violated the principles of natural justice and committed an error by not granting reasonable and sufficient time to Zee to file a reply.

Early in the month of October, Zee conducted the due board meeting to decide upon the issue of convening an EGM. Zee concluded the meeting and conveyed the outcome in a statement asserting its inability to undertake an EGM and outright rejection of minority shareholders' request. Subsequently, Zee moved to Hon'ble Bombay High Court and submitted that such a requisition made by the petitioners is illegal, ultra-vires, invalid, bad in law and incapable in implementation. While reiterating its standpoint on the requisition made by Invesco, Zee also prayed before the court for an injunction against Invesco from acting in furtherance of the requisition notice in question. In response, Invesco contended that the board or members have no authority to decide whether or not a particular proposed resolution is illegal or valid. The shareholders possess the right to decide in a general meeting whether or not to pass the proposed resolution, and the same cannot be curtailed by the company or the board. The single judge bench after further consideration ordered in favor of Zee and granted an injunction restraining Invesco and OFI from taking any action or step in furtherance of the requisition, including calling and holding an EGM under section 100(4) of the Companies Act, 2013. Aggrieved by the said order, Invesco filed an appeal before a division bench of Hon'ble Bombay High Court seeking negation of injunction against it. Invesco in the appeal argued that single judge does not have the jurisdiction to grant stay on matters that fall under the NCLT's domain. The appellant also contended that a court cannot be asked to assess the validity of the resolution proposed by the shareholders of a company at the requisitioned EGM. Single judge had also denied appointment of six new independent directors and removal of Goenka without approval from the company's nomination and remuneration committee. The same was challenged by Invesco before the division bench on the grounds that calling an EGM is an absolute right of a shareholder and cannot be curbed by any committee. It was also pointed out by Invesco that the single judge made a fundamental error in concluding that there is no distinction between a requisition for EGM made by shareholders and those proposed by the board. Adding in to its array of arguments, Invesco said that where shareholders have requisitioned for an EGM to raise an issue, it should not be discredited since the majority shareholders in a company can appoint the directors of their choice by election and the have the power to remove them by moving a resolution. The right has been safeguarded by the Companies Act. The submissions made by Invesco are nothing short of portrayal of shareholder activism- acquaintance with its legal rights and divulging the wrong practices in the company.

Allowing the EGM plea by Invesco to oust Punit Goenka, the division bench of the Bombay High Court quashed the single judge order and has ordered to keep the status quo for 3 weeks for Zee to appeal against the order in the Supreme Court.

ZEE'S MERGER WITH SONY

Nearly a week before Invesco's petition before the NCLT, Zee Entertainment Enterprises entered into a non-binding term sheet to merge with Sony Pictures Networks India ("SPNI"), combining both companies' networks, digital assets, production operations and program libraries. Subsequent to conducting mutual due diligence and finalizing the negotiations, the two entities on the last day of the pre-agreed 90-day exclusivity period signed a definitive agreement to conclude the deal, which will see Zee merging into SPNI to establish a new entity. The new entity is anticipated to produce India's second largest entertainment network in terms of revenue. The merged company's board would entail nine members, five out of which would be induced by Sony, three would be independent directors, and Zee is to be represented by Punit Goenka, who would also assume the role of CEO and MD of the new company. Be that as it may, SPNI would be the sole promoter in the entity. Under the transactions deliberated by a non-compete agreement barring Zee to enter the sports broadcasting business for up to 4 years, the promoter group of SPNI covenants to pay a non-compete fee to the existing promoters of Zee. The fee would be in turn employed by Zee's promoters to infuse primary equity capital into the merged entity, entitling them to acquire an estimated 2.11 per cent of the shares in the combined company on a post-closing basis. Thus, promoter group of SPNI would possess the majority stake of 50.86 per cent as compared to 3.99 per cent held by Zee's promoters after the closing. Extant shareholders of Zee Entertainment Enterprises Ltd. would thereafter be holding a 45.15 per cent stake in the new company[18]. In accordance with the signed deal, the new entity will be publicly listed in the country and the promoters of Zee are entitled to augment their stake up to 20 per cent over a period of four years from open market at prevailing market prices, subject to application of 5 per cent creeping acquisition norms. In accordance with the terms of the deal, Zee shareholders will get 85 shares of the new entity for every 100 shares held in Zee. Further, the merger is subject to approvals from the stock exchanges, SEBI, NCLT, Competition Commission of India ("CCI"), Ministry of Information and Broadcasting, shareholder and creditor, and third party before it can be completed.

18. Zee Entertainment, Press Releases, (2021), https://assets.zee.com/wp-content/uploads/2021/12/22091653/Sony-ZEE-Press-Release-FINAL.pdf

THE INVESCO IMPEDIMENT

The Zee- Sony deal faces uncertainty due to meagre promoters holding in Zee. In the light of the governance battle with the current board of the company, Invesco's assent plays a prominent role in the success of the transaction. Amidst the exclusivity period, Invesco handed out an open letter [19] to the shareholders of Zee, iterating obscured support for the non- binding term sheet but raising two concerns over the proposed merger deal. Primary subject of concern for Invesco was the unfairly rewarding a 2 per cent equity stake the founding family in the guise of a non-compete, at the expense of the stake of other ordinary shareholders. In particular, the merger is believed to dilute Invesco's stake down to 8 per cent in the new entity. Another anticipated cause for which Invesco might have dissented to the deal is the equivocality on the specifics for Zee promoters raising their stake from the current 3.99 per cent to 20 per cent, since the scheme does not provide the promoter any pre-emptive or other rights to purchase shares of the merged entity from the promoters of SPNI. The said open letter was also an attempt to once again stimulate and reinstate the demand for pursuing EGM to effect the requisite change in Zee's board reaffirming the corporate governance debacle. The largest shareholder of Zee also expressed its disappointment that the management of Zee is hiding away and resorting to the merger-in-progress as a retort to the overpowering shareholders insisting a change in the leadership at Zee. What was left out from the open letter was the disclosure of opportunity cost of the parties embroiled in the dispute. It was revealed that in January 2021, the behemoth Reliance Industries Ltd. made an offer to Invesco to merge its media business with Zee. When the news became public during the exclusivity period, Reliance issued a statement clarifying that the deal did not go through due to nascent differences between Zee and Invesco. It further said that the offer was not even presented before the board of Zee. The outbreak of the update has subsequently raised doubts over the investment firm's persistence to oust the current Zee MD on the façade of depraved corporate governance. In the opinion of legal experts, the transaction might take a tad longer than the tentative time owing to the litigation. The merger would have to experience complex competition analysis from CCI due to the significant market presence of both the companies, which would further defer the completion of the deal.

That being said, how Invesco votes upon the merger was seen as the litmus test for its intents towards Zee and the promoters, since the merger would renovate Zee into a subsidiary

19. Invesco, Press Releases (2021) https://s21.q4cdn.com/954047929/files/doc_news/2021/10/Open-letter-to-Zee-shareholders-press-release_vF.pdf

of the Sony USA, which would sequentially develop and advance corporate governance at Zee, the root cause of the brawl. Invesco's dissent would have also proved to be counterproductive for Zee and put it back in the past, and thus detrimental to the minority shareholders' wealth [20]. However, after months of unrest, Invesco finally gave its assent to the deal acknowledging the benefits to the shareholders and accomplishment of its objective of strengthening board oversight of the company. Furthermore, while calling a truce and withdrawing its EGM requisition, Invesco had reportedly also sold 7.8 per cent of its stake in Zee in a block deal in the month of April, thereby putting a rest to all the differences.

SHAREHOLDER ACTIVISM IN INDIA: TRENDS AND THE SURGE

Shareholder activism serves as a corrective tool for corporate governance. So far, stakeholders in India Inc. majorly concentrated on the deeds of the companies that facilitated their individual wealth creation, shirking from the ethical code and corporate governance. Another cause attributing to passive shareholder activism could be the subsistence of family-dominated businesses in India which pose a separate governance angst like protection of minority shareholders, fiduciary obligation of the promoters to them, etc. Nevertheless, recent mounting shareholder activism has been a topic of discourse for both companies and the shareholders, following the introduction of CA 2013, SEBI's enhanced eye on governance practices, and the intensifying role of PAFs in the public market. It is clear how prominent the role of a PAF has been in the Zee- Invesco tussle. Another instance highlighting the role of PAFs in shareholder activism can be seen by plunging into the 2014 Maruti Suzuki India Ltd. case. The Japanese parent of the company put forward a controversial proposal to build a plant, marking a diversion from an earlier plan where the subsidiary was to build the plant. The minority shareholders viewed the proposal as a ploy to shift revenue from Indian subsidiary to the offshore parent. A similar view was broadcasted by the proxy firm IIAS and argued avidly against the proposal over the concern that it could make the parent company domineering over the Indian. Consequently, minority shareholders and institutional investors collectively rejected the proposal, forcing the company to modify its plans.

2021 saw numerous instances of shareholder activism besides Zee. To put it in perspective, 82 per cent of the company resolutions witnessed participation from shareholders in 2021 as compared to 69 per cent in 2017 [21]. In August 2021, MD of Eicher Motors Ltd.,

20. Orders in the case updated across all forums till March 23, 2022.
21. Ashish Rukhaiyar, Shareholder Activism: Indian investors are becoming more vocal now, B. Today, Dec 11, 2021, https://www.businesstoday.in/latest/economy/story/shareholder-activism-indian-investors-are-becoming-more-vocal-now-more-than-ever-before-315234-2021-12-11

Sidhhartha Lal sought a 10 per cent salary hike amid the pandemic, low revenue and profit margin. The proposal was vehemently opposed by the shareholders. As a result, shareholders of Eicher rebuffed the special resolution to reappoint Lal as the MD for 5 years in the company's annual meet. Furthermore, shareholders had also denied payment of the salary to him. However, shareholders gave their assent to an ordinary resolution for re-appointment of Lal as a director. On the same lines, Ekta Kapoor of Balaji Telefilms failed and faced outrage and rejection from shareholders for resolution proposing pay hike for her. Shareholder activism was also beheld in the house of the pharmaceutical company, Lupin. The company made a new proposal for Employ Stock Option Program on account of insufficient stock options to present to current and future employees under the existing schemes. PAFs urged the company's institutional investor to dissent to the proposal. Thus, the proposal to grant 6 million stock option to company's employee was rejected by the institutional investors of the company. Contrary to others, Wipro was able to surmount the activism movement of shareholders and reappointed Patrick Ennis and Patrick Dupuis as independent directors despite the PAFs having advised the shareholders to vote against the proposal. Nevertheless, shareholder activism shouldn't be used as a tool to circumvent unjust enrichment for a particular shareholder. The SEBI chairman Ajay Tyagi at a conference had also enunciated shareholder activism to be not bad only as long as it shields the interests of retail investors. The odds of waging a proxy fight under the cloak of shareholder activism, in order to replace or takeover the current board, cannot and should not be neglected. What can be said as the biggest corporate battle in the country, the Supreme Court in the case of *Cyrus Investments (P) Ltd. v. Tata Sons Ltd.*[22], held that removal from position of directorship is not adequate to make out a case of oppression and mismanagement against the subsisting board. It further observed that a tribunal has the power to grant relief in case where the removal takes shape of a maneuver to oppress or prejudice the interest of certain members of the company, albeit the removal was in conformation with the law. The court also decreed that the dissolution of a company on the grounds of oppression and mismanagement can occur only when there is a reasonable loss of trust in the conduct and management of the firm's deeds. A simple lack of trust between majority and minority shareholders will not suffice.

DEALING WITH SHAREHOLDER ACTIVISM

When a company consistently underperforms with less or no sign of recovery, activism may be on the horizon. Shareholders usually evaluate the board's annual report and vote in support of management's propositions if they are convinced with them. Questions and red flags

22. Cyrus Investments (P) Ltd. v. Tata Sons Ltd. (2021) SCC Online SC 272 (Ind.)

may need formal meetings with the board and top management. Boards might take advantage of these chances to try to explain and justify their decisions. Those shareholders who aren't convinced by the justification may vote against the management at the annual general meeting. Often, large or activist shareholders might delve into their cause of concern with a letter to the company and the management elucidating their dissent for company's dissent, and might even provide suggestions for changes. How the board follows up, reacts to and deals with the distress, is extensively followed up by the shareholders. The philosophy can be bolstered by the Zee- Invesco instance, wherein Invesco wrote an open letter to the shareholders of Zee amidst the undergoing legal battle, prompting the shareholders on the issue of bad governance practices in the company and thereby removal of Goenka, even after the concern was taken up in the general meeting. As a part of their fiduciary responsibilities, the board directors shall devote the greater part of their board meetings to strategic planning and oversight. With the advancement of technology, the companies now have several tools to ensure good governance practices. A board portal is a centralized and highly secured software that includes digital communication amongst the directors and the members, voting tools, meeting minutes, agenda features, etc. Another tool available is cloud governance. It is a system offering management with a set of standards for the system's efficacious and efficient operations while achieving the company's goals. The optimal use of resources results in cost reduction and risk management. With shareholder activism spreading across regions and industries, every company can fall prey to it. Primarily, the companies ought to admit and address the coherent rights of shareholder activist safeguarding their interests- voting rights in particular, since their votes on strategic and governance proposal could prove to be a determinant [23]. Further, corporations should view the bonafide movements as a caveat to contemplate their equity growth plans. With a concrete and scrupulous plan in place, the shareholders support towards management would be evident [24]. Thus, overcoming any activism campaign would not be an uphill battle for the board. Also, Edward Freeman's stakeholder theory of corporate governance states that the management must create value not just for the shareholders, but also for the stakeholders- considering roles and interests of any group or individual who may impact the fulfilment of firm's goals and objectives [25].

23. Dominik Breitinger, what is shareholder Activism and how should businesses respond, W. Eco. Forum, Aug 18, 2017, https://www.weforum.org/agenda/2017/08/shareholder-activism-business-response-explainer/
24. Id.
25. R. Edward Freeman, Strategic Management: A Stakeholder Approach (1984)

CONCLUSION

In today's time, good corporate governance practices are viewed as an intangible asset for a corporation. Taking into account the recent trends and awareness amongst the shareholders, it is safe to say that shareholder activism is here not just to stay, but to bloom even further. Covid-19's prolonged ramifications are likely to be a catalyst for shareholder activism. The companies and the boards are required to step up to the plate by ensuring a robust governance mechanism to uplift investor's confidence in the management, thereby enabling the board to endure and walk out of an activism campaign unharmed. Shareholder activism is probable where the management fails to communicate often with the shareholders or address their queries. Secondly, the role of proxy advisory firms as well as large shareholders in instigating shareholder activism has been eminent, as was also witnessed in the Zee- Invesco brawl. However, it is pertinent to extrapolate if the underlying purpose of the activism results in amelioration of governance standards in the company, or if it is only an astute ploy to take over the management.